

Minutes
Planning Board
February 13, 2020

Those present were:

Philip O'Connell, Chairperson
Obron Farber, Member
John S. Tarbet, Member
D. Walker Wainwright, Member
Elizabeth Baldwin, Village Attorney
Kenneth E. Collum, Code Enforcement Officer
J. Kent Howie, Ordinance Inspector
Billy Hajek, Village Planner
Matthew Pachman, Attorney on behalf of Furtherfarm, LLC
David Dubin, Attorney on behalf of EH 226 LLC
Linda Margolin, Attorney on behalf of Furtherfarm, LLC
Oliver Cope, Architect on behalf of Furtherfarm, LLC
Russell Scott, Engineer on behalf of Furtherfarm, LLC
Pamela J. Bennett, Deputy Clerk

The Chairperson called the meeting to order at 11:00 a.m., and the following official business was discussed:

1. **Minutes**

Upon motion of John S. Tarbet, duly seconded by D. Walker Wainwright, the Board unanimously approved the minutes of January 9, 2020.

2. **44 Huntting Lane, LLC – 44 Huntting Lane**

The Board has before it a request for the Chairperson to sign the final map.

Ms. Farber stated for the record that this property has not been cared for with the respect it should have been in light of the Historic District and the neighbors' concerns for the appearance of the property during the process; Mr. Wainwright concurred.

Upon motion of Obron Farber, duly seconded by D. Walker Wainwright, the Board unanimously authorized the Chairperson to sign the Final Map dated October 25, 2019.

CONTINUED HEARING

Furtherfarm, LLC – 218 Further Lane – SCTM #301-5-3-11.1
EH 226 LLC – 226 Further Lane – SCTM #301-5-3-11.3

Chairperson O'Connell called the hearing to order at 11:03 a.m.

Matthew Pachman Esq. appeared on behalf of Furtherfarm, LLC and stated that the Town of East Hampton has commented on the map, memorandum from JoAnne Pahwul dated January 10, 2020, since the property in question is within 500 feet of the Village/Town border and that he has responded to those comments pursuant to letters dated February 5, 2020 from Leonard I. Ackerman Esq. and Russell Z. Scott and letter dated February 3, 2020 from Daniel Thorp.

With reference to the site visits, the driveway apron has been mocked up in full scale so the Board Members who participated in those site visits could actually stand in the apron and experience what cars going east and west on Further Lane or entering and exiting the property would experience. Each of the concerns in the Town's memo has been thoroughly vetted by the Board and its consultants over the past eight months; the Town's comments were directed to the creation of an additional curb cut and potential impact upon traffic and the character of Further Lane. As to the additional curb cut, the applicant did not originally propose to retain the easterly curb cut. When the Board had the opportunity to consider the impact of the FAAR (Fire Apparatus Access Road) and based upon Ken Collum's advice that the proposed driveway would have to be 26 feet wide, the Board felt it was more in keeping with the character of Further Lane to go with the plan for two curb cuts so that each driveway would be of a width which is in keeping with the other driveways in the neighborhood. With reference to the Town's comment regarding the width of the new driveway, it is not going to be 33 feet in width all the way through; the driveway is only 14 feet wide and the apron, as it flares out to Further Lane, is widened to 38 feet because of the Board's request that there be traffic calming measures in the middle of the apron to better flow the traffic leaving the site. The width of the apron was arrived after close consultation with the Board to address sight distances for exiting vehicles. The property that is most affected by this proposal has

submitted a letter in support of the application. Mr. Pachman stated that the Town's memo also suggests that the proposed location of the curb cut may increase the potential for traffic safety issues but the Board has reports from Nelson, Pope and Voorhis which definitively state that there are going to be no such traffic concerns. The Town's memo appears to warn that the elimination of the requirement of the prior subdivision approval for a shared driveway could set a precedent for other parcels in the Town and in the Village but a determination from the Village cannot have any precedential value to the Town. Mr. Pachman requested that the Board adopt a Negative Declaration under SEQR and conditionally approve the application subject to approval of the Suffolk County Department of Health Services.

David Dubin Esq. appeared on behalf of his client EH 226 LLC and stated that the Board has vetted the lot line modification application and stated that two narrow driveways servicing the properties would be more flattering to the character of the neighborhood than a shared 26-foot-wide driveway (FAAR requirements). Mr. Dubin noted that Further Lane in some places is only 21 to 23 feet wide. The applicant's engineers submitted reports, studies, analyses, and testimony confirming that the proposed driveway exceeds all safety standards. The Village Fire Chief and the Village Engineer concurred that that new driveway will meet the safety standards. A landscape design was presented that not only compliments the surrounding neighborhood but enhances it. Mr. Dubin stated that the Chair has explained that there should be changed circumstances for the Planning Board to move beyond the 1976 subdivision condition of a shared driveway. When the State Code was amended in 2015, which reflected the increased size of fire engines and fire equipment, it required 26 feet for a driveway which means that the easterly driveway violates that condition and the flagpole that exists does not satisfy those conditions. With the addition of the proposed driveway, the net result is an access driveway for 226 Further Lane that meets the FAAR standards and is of a width and character that compliments the neighbor's properties.

Linda Margolin Esq. appearing on behalf of Furtherfarm, LLC stated that she wanted to share some thoughts about how that original driveway placement came to be as there is some concern about moving the driveway from the easterly side of the property to the westerly side. After reviewing the old files, locating the driveway along the easterly side instead of the westerly side was simply the function of where the surveyor happened to place the 20-foot-wide easement. As Mr. Dubin has noted, the condition for

a shared driveway was proposed as part of the original subdivision. Under the Village's Zoning Code in 1976, the property could have been divided into three parcels. Instead of having a grandfathered 20-foot-wide easement which does not meet the current requirements for fire apparatus access, there will be a driveway serving the 226 Further Lane lot that has a widened portion in the middle to enable fire apparatus to better access the property, complies with what is required, and better serves the interest of fire safety. As far as the precedential value of the Board's decision, precedence is talked about in terms of what a Zoning Board does because the Zoning Board creates a body of law when it grants variances or gives code interpretations. The approval of a subdivision or a modification of a subdivision is a far more discretionary action by a Planning Board. Ms. Margolin continued that the applicant cannot come in and insist the Planning Board grant approval. The Board can, without fear of setting a precedent, grant the approval because of the change of circumstances and because the proposal overall serves planning purposes which include enhancing fire safety.

Ms. Farber stated that she is not an attorney but feels as a Member of the Planning Board that she represents the community where she grew up and does not find any decisions made by the Planning Board a decade ago minor; she remembers what Further Lane looked like at the time the Fisher subdivision was considered. Ms. Farber stated that she is considering, as a Member of the Planning Board, her responsibility to look into the future of East Hampton and anticipate that perhaps the alternative to Montauk Highway will be Further Lane. Ms. Farber stated that her concern is safety now and anticipating Further Lane in the future. The Board needs to take into consideration that the driveways are not likely to have a lovely, little singular sedan entering or exiting the property, they are more likely to have huge landscaping vehicles which the Planning Board, a couple of decades ago, could not have anticipated. There is a lot of construction and those construction vehicles are also big trucks, there are garbage trucks, and major vehicles coming in and out. Ms. Farber stated that while the neighbor does not have a concern with the current desires of the applicant, she is looking at it as who the neighbor might be in 10 or 20 years.

Mr. O'Connell stated that the Board has received a letter from Town Supervisor Peter Van Scoyoc and from Assistant Planning Director JoAnne Pahwul and that he would like to respond to Ackerman, Pachman, Brown & Goldstein LLP's letter dated February 5, 2020. With reference to paragraph two, there seems to be some inaccuracy of the last sentence as he does not

recall the offer by the applicant to abandon the easterly curb cut; there was a representation that it would not be used in the immediate future but not to eliminate the applicant's right to that easterly curb cut. Mr. O'Connell stated that he believes the footnote at the bottom of page one was his comments but since September 12, 2019, there has been more information, more site visits to the property, and more input; the concern of how permitting a second driveway could impact the character of the neighborhood and safety issues led him to believe that the prior Planning Board may have had it correct when they approved the subdivision. Mr. O'Connell continued that looking at the Suffolk County GIS (Geographic Information Systems), going from Old Beach Lane to Skimhampton Road, the curb cuts and the tax map and the overlay, it looks like approximately 12 additional parcels could request direct access onto Further Lane thus affecting the character of the neighborhood. The fourth paragraph speaks about the FAAR road and the current 20-foot-wide flag strip and safety concerns. Paragraph five speaks to a 14-foot-wide clearing once you get past the initial flare out which seems to go against somewhat the reasoning of the desire to have the FAAR road. The existing 20-foot flag strip could be cleared to the full 20 feet. Also in paragraph five it speaks about the Board's sight distance issues; yes, the Board consulted, but the applicant came back with something very different from the discussion about swinging the driveway to give better sight distance; there was talk about swinging it to the east so you could get out of the dip in the elevation and away from the foliage that exists just to the west of the property, instead the applicant flared out 38 feet to push right up against the foliage to the west. The raised center, although well intentioned, is going to push drivers exiting the property to the western portion when it was intended to be only ingress, it is going to wind up being an egress. There was concern about future sight lines looking east if the northern lot is allowed to be planted all the way to the street; there were conversations about providing some sort of an easement so that view would not be blocked as you look to the east, but the Board never received anything. Paragraph six talks about the Village Engineer finding the sight lines adequate; what was left out is that they were found adequate in its current condition. When the lot to the east is planted, that will change the situation. The observation of several Board Members on several occasions found that, even though the AASHTO standards were met and the Village Engineer made that statement, the Board found that it was hard to view bicyclists coming from the west who were traveling east, that is why there was a discussion about swinging the driveway. While Nelson, Pope & Voorhis are well respected consultants, Mr. O'Connell

stated that Board Members are allowed to rely upon their common sense and actual observations when going through the process of reviewing an application.

With reference to the letter from Nelson, Pope & Voorhis dated January 31, 2020 paragraph three discusses low utilization; Mr. O'Connell stated that he is not sure how accurate that is when you are talking about July and August and you have a large home and it is full of people that are coming and going throughout the day. With reference to the comment that the new driveway will be safer, Mr. O'Connell stated that he is not sure that is accurate either because you have the northern lot that can plant right up to the road and you have the foliage just to the west of the driveway. Mr. O'Connell stated that he cannot comment on the conflict points as that is not his expertise but the sight line distance, when looking west, was a problem. Paragraph six, again, the Board is allowed to use their common sense when evaluating applications and considering the AASHTO standards.

Mr. O'Connell stated that the Board should go through SEQR and come to a conclusion. Some of the items to be considered is did the applicant demonstrate significant change in circumstances to warrant modifying a previous Planning Board's decision. The applicant wants an uninterrupted front lawn, a second curb cut, the reasons to comply with FAAR requirements make it safer, however, the current access is 20 feet wide which can be cleared to that width.

Mr. Pachman apologized for interrupting Mr. O'Connell and stated that this is the first time he has heard these comments from the Board and requested an adjournment in order to digest and respond to today's comments. Mr. O'Connell asked if the Board should hold the hearing open and not do SEQR. Mr. Pachman said yes. Mr. O'Connell asked if there are timing issues. Ms. Baldwin said no, not if the hearing is still open. Mr. O'Connell stated that the other Board Members may disagree but that he felt it was imperative to respond to the correspondence. Mr. Dubin stated that it would be nice to have an opportunity to hear from some of the other Board Members. Mr. Tarbet stated that he did not have any comments to add at this point. Mr. Wainwright questioned the negative feeling about swinging the driveway.

Mr. Cope stated that he is the architect but also attended the site meetings and has a slightly different recollection in that he recalls the discussion of swinging the driveway as an option.

Mr. Dubin stated that the easterly driveway cannot be abandoned because the Nature Conservancy has an easement over the driveway and the two parties that are before the Board have reached a settlement agreement that that driveway will not be used for the lifetime of Mr. Baron and his family. Mr. O'Connell stated that there will be a net gain of a driveway, there would be an additional driveway, it will still be two curb cuts, one on the east and one on the west. Mr. Dubin noted that the existing access would not be for ingress and egress of vehicles, it would be limited to use by the Nature Conservancy.

Ms. Margolin stated that with respect to the Nature Conservancy easement, it is pedestrian only so technically speaking they do not need to maintain a vehicular curb cut in order to continue to honor that access. Mr. Dubin stated that that is what the discussion was, it was a big part of what Ms. Farber said, it was a big part of what the Chair said, and if that is one of the biggest issues, this is a direct way to address that. Mr. Dubin stated that this driveway did not have to be in the easterly location, it was placed there because that is where the easement was so why would you not give this applicant flexibility of moving it if they said they would not continue to use it for vehicular access.

Mr. O'Connell stated that if the proposed driveway were swung to the east a little bit so as to get the sight distance, he would feel good about that; if the driveway is swung to the east, the curb cut could be narrowed. Mr. Pachman asked for more of an explanation about swinging the driveway to the east. Mr. O'Connell stated the property at 60/62 Further Lane has kind of a swing which moves it 15 to 20 feet to solve the sight distance issue. Mr. O'Connell added that there also needs to be something that preserves the sight lines when looking to the east. Mr. Hajek had suggested a road widening easement but Mr. O'Connell stated that he is not suggesting that. Ms. Margolin stated they had offered a covenant that it would be kept clear of anything except low vegetation within a certain number of feet. Mr. O'Connell stated that the Board never saw anything. Mr. Dubin stated that the Planning Board could issue a conditional approval subject to a covenant that says it has to be kept open. Mr. O'Connell stated that if the existing easterly access is going to be eliminated, once you have more than four

buildings, if the front and back lots are developed, it changes the character of that driveway that will be required to be installed on the west. Mr. O'Connell suggested that Mr. Baron provide access through his lot located in the Town. Ms. Margolin stated that Mr. Baron's house lot is in the Village and he has two lots beyond that to the east that are located in the Town. Mr. O'Connell stated that if the easterly curb cut is eliminated, you now have to have a full-sized FAAR. Ms. Margolin stated that they had a conversation with Mr. Collum about if the Furtherfarm lot took its access off a shared driveway, whether the shared driveway had to be 26 feet wide until the first lot peeled off and Mr. Collum was of the view that that would not comply with the State Code.

Ms. Margolin stated that they have looked at a number of alternatives once becoming aware of the Town's express concerns; abandoning the easterly curb cut would result in the new driveway being 26 feet in width but there was a preference for retaining the easterly curb cut and having a narrower driveway when the access point is swapped. Ms. Margolin stated that, after reading the FAAR rules, it is not clear and Mr. Collum has given his interpretation. If the Board is concerned about the appearance of the driveway from Further Lane, they could have a single driveway serving both lots and passersby will see a 26-foot-wide driveway.

Mr. Collum stated that he will give the interpretation that New York State and the Regional Board, as well as Albany, had handed down to 62 Further Lane which is why that road is 26 feet in width. The driveway can be terminated within 150 feet of the front door of the last residence and the reason for that is because fire apparatus are 150 to 200 feet long; the reason the FAAR has to go all the way back is because if there is an emergency at the front house and then there is an emergency at the back residence, you need to be able to get emergency vehicles back there. Mr. Collum reminded the Board that when there was a fire on West End Road, an ambulance was trapped in place. Mr. Collum stated that Mr. Pachman is well aware of the back and forth with Richard Smith from the Department of State and Albany as far as they have not granted variances for reducing the width of the FAAR because the width of the Village's ladder truck, when the outriggers are out, how much that blocks the road. What the Fire Chief looked at was two driveway accesses so currently the plan that you were looking at does meet that requirement.

Mr. Pachman stated that the applicants are trying to reach a solution which accommodates fire safety and public health point of view. Mr. O'Connell stated that this is all to get an uninterrupted front lawn, a lot of work. Ms. Margolin stated that that is a mischaracterization, both of these property owners believe that they are going to benefit from this application because in each case it solves some development problems and potential use problems that are inherent in the original subdivision and the way it was done.

Ms. Margolin stated that the fire safety rules exist for a reason and that this Village has many locations where historic easement access and narrow roads pose constant problems for access for fire apparatus, the equipment is bigger and it represents a real change from conditions as they were perceived over 40 years ago; everyone is a lot smarter about what is needed for access. The need for privacy and bucolic setting has to be weighed against safety concerns in ways that the Board did not do as a government and a society 40 years ago, and as onerous as it is to comply with it, on some basis, this Board and applicants before the Board have to recognize the fact that the safety rules exist for a reason and that we should embrace the changes that come with that recognition.

Mr. Dubin stated that they are not bypassing the FAAR rules, it is different whether it is serving four buildings or more and so the road widens at intervals that are required by code so vehicles can pass one another; they have the required hammerhead turns as the driveway gets close to the house; a water main and a hydrant have been installed and the house is sprinkled.

Ms. Farber stated that it was made clear in the beginning, the design team has been great and there has been collaboration along the way as concerns arose, but the Board said at the very beginning that the previous Planning Board made a decision a long time ago with regard to a number of curb cuts and it would take something significant for the Board to overrule that decision. Ms. Farber stated that she agrees with JoAnne Pahwul's letter of January 10, 2020 that there are a number of other common driveway easements on Further Lane located both within the Village and the Town and that the proposal to eliminate this requirement could set a precedent for other parcels which refers back to what the Chairman said.

Mr. Tarbet asked what the Board's options are at this point. Mr. O'Connell stated that the applicant has asked for an adjournment, the

hearing will be kept open so the Board does not get caught up with a timeframe where it has to take action; there is no good solution to the issue.

Mr. O'Connell stated that if the existing curb cut is abandoned, the same width as what exists at 62 Further Lane will be required. Mr. Hajek said apparently so. Mr. Collum had stated that the only reason why the FAAR is in front of the Board is because there is a change to a previous Planning Board subdivision; if the Board decides to take no action, a FAAR is not required. If the Board modifies the existing curb cut, that trips the FAAR requirement. Mr. Dubin noted that if there is no action, it does not improve fire safety. Mr. Collum stated that the Village does not have the ability to force the FAAR requirement. Mr. Dubin stated that what results is a 20-foot-wide driveway that does not comply with FAAR noting that the applicant is trying to do something that enhances safety. Mr. Pachman asked if the applicant were to have the one curb cut on the westerly side and was able to satisfy the FAAR standards would that be acceptable. Mr. Hajek stated that that question is determined by the circumstances in front of the Board and suggested that the applicant come back with alternatives that keeps two curb cuts and maybe incorporate some of the comments made by the Chairman early on in the meeting, propose an alternative with a single curb cut that complies with the FAAR requirements. Mr. O'Connell questioned whether polling the Board would be appropriate to see how the Board feels about modifying the previous Planning Board's decision and having a 26-foot-wide road. Ms. Baldwin stated that she agrees with Mr. Hajek that the Board should have alternatives, which is a part of SEQOR, as seeing the alternatives might be something that would aid the Board when it makes a SEQOR determination. Mr. O'Connell stated that it would not be appropriate to poll the Board. Ms. Baldwin agreed noting, however, if the Board has made its determination as far as the application as a whole and is ready to make a decision, the Board can make that decision. If the Board would prefer to have the applicant submit alternatives to review to see what they think would be most appropriate, then the Board has that ability as well. Mr. O'Connell stated that the Board cannot get there until after going through the SEQOR process. Ms. Baldwin stated that if the Board does not think the applicant has addressed the other alternatives adequately, then that is something the Board needs to consider. Mr. Dubin asked about other options. Mr. O'Connell stated that if the other curb cut is eliminated, it is good because there is no net gain in access but then there is the 26-foot-wide driveway all the way down which is not appealing and out of character with the neighborhood. Mr. Dubin stated that if the existing curb cut is no longer

going to serve vehicular access but only pedestrian access for the Nature Conservancy, why could it not be in effect shut down where you would not even see it. Mr. O'Connell stated that he is talking about the relocation of the driveway from the east to the west. The current application does not address the safety issues so that is a big problem and it seems to be out character that 38-foot width with a triangle entrance and exit. Ms. Farber stated that while the applicant's consultant provided an opinion with regard to the safety issues, she does not concur with the conclusions. If you look at the difference in traffic from a decade or two decades ago, she does not concur that there is not a safety issue with regard to where the proposed westerly driveway is to be located. Mr. Dubin asked Ms. Farber if she feels it would be safer to have a 20-foot-wide road on the east with having shared access by two properties of this nature which does not meet the FAAR requirements. Ms. Farber asked why cannot the proposed driveway meet the FAAR requirements because the driveway to the east, where the current entrance is located, does not have the safety issue concerns that your proposed westerly driveway has. Mr. Dubin stated that the Village Engineer and Nelson, Pope and Voorhis reported that the sight lines were adequate. Mr. O'Connell stated that the Board's visit to the property bore out differently. Ms. Farber added that it is the Board's common sense. Mr. Scott stated that AASHTO is a document that municipalities use all around the country, the DOT, the County, Towns and other municipalities as guidance and that he does not understand the common sense approach; the guidelines indicate it is beyond the recommended distances that you need to make those turns. Mr. O'Connell stated that it is the sight distance when you are pulling out and you have the bicyclists flying down Further Lane; pedestrians are moving slow enough, this is a bike route and you have the neighbor to the west planted almost to the road, the foliage impairs your vision, and there are hundreds of bicyclists cruising down Further Lane. Mr. Scott stated that those distances in AASHTO are based upon the speed of the roadway and the chart that was used was for the speed of the road; the bicycles are not going to be traveling faster than the cars. Ms. Farber asked Mr. Scott if he has spent time on Further Lane in the summer. Mr. Scott said no. Ms. Farber stated that there are bicycle clubs that ride a lot faster than the speed limit. Mr. Scott stated that he understands the common sense aspect but Nelson, Pope and Voorhis does a lot of design work on State roads, County roads, and new accesses for subdivisions and everyone uses the same manual. Mr. O'Connell stated that Nelson, Pope and Voorhis is a very well-respected firm and that the Village retains the firm occasionally. Ms. Farber stated that this is site specific and the concern is about safety.

Mr. O'Connell stated that with reference to options, he is not sure there is a good solution to the problem. Ms. Margolin stated that if the Board grants an adjournment, they will put their thinking caps on and see what they can come up with.

Ms. Farber asked why the applicant would not want to do the single driveway where the easterly entrance is currently located. Ms. Margolin stated that one of Mr. Baron's goals was not to have his undeveloped lot (218 Further Lane), which he has no intention of developing, to be separated from the remainder of his property (254 and 252 Further Lane). That lot (218 Further Lane) cannot be sterilized because there might come a time when they might have to sell the lot so they cannot say it will never have any roadway access. The plan has to envision that at some time in the future those lots might not all be beneficially owned by the same family. This application has the advantage of giving Mr. Fixel (226 Further Lane) a better entrance, a safer entrance to his property where he would not be sharing a 20-foot-wide easement that runs about 1,500 feet back to his property, and it would give Mr. Baron (218 Further Lane) the advantage of being able to join his undeveloped lot with the rest of his property, functionally speaking. Ms. Farber stated that if the applicant is looking for options, the Board's safety concern is greatly minimized by that singular curb cut on the east. Ms. Margolin stated that if that is the case, the applicant would not need to come to the Board for any approval; if the easterly access is retained as the sole access point for both lots, it would be within the existing subdivision approval and the applicant would not need the Board's approval and that is something the applicant will look at if this Board is not only looking for a single curb cut but not to see that a curb cut be relocated. Mr. O'Connell asked if Mr. Fixel is going to give up his right to use that 20-foot flag strip. Ms. Margolin stated that that is correct, until the Furtherfarm lot (218 Further Lane) is passed out of the common ownership of Mr. Baron's family. Ms. Margolin stated that the agreement that exists is that Mr. Baron's family would not need an access point from that lot (226 Further Lane) as long as his family owned both lots to the east, house lot and vacant lot. Mr. Tarbet asked Mr. Collum if when either one of the two lots are developed in the future, would the current driveway have to meet the FAAR standard. Ms. Margolin, answering for Mr. Collum, stated that if the subdivision is not modified and the subdivision approval pre-dates the FAAR rules, then driveway access does not have to meet the FAAR rules.

The hearing was adjourned until the March 12, 2020.

Upon motion of John S. Tarbet, duly seconded by D. Walker
Wainwright, the Board unanimously adjourned the meeting at 12:33 p.m.

VILLAGE OF ... NY
DATE March 12, 2020
TIME 1:00 p.m.

